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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

CALVIN WARE
LA. DOC #89604
VS.

CIVIL ACTION NO. 6:09-1842
SECTION P

WARDEN LYNN COOPER

MAGISTRATE JUDGE HILL

PARTIAL JUDGMENT

This matter was referred to United States Magistrate Judge C. Michael Hill for Report and Recommendation. No objections have been filed. The Court concludes that the Report and Recommendation of the magistrate judge is correct and therefore adopts the conclusions set forth therein. Accordingly;

IT IS ORDERED that petitioner's first and third claims for relief, that petitioner received Ineffective Assistance of Counsel because defense counsel did not request a jury instruction on the defense of intoxication and that petitioner was denied his Constitutional rights at the evidentiary hearing held on his application for post-conviction relief when the court refused to continue the hearing so petitioner could secure the presence of the victim of the crime and other lay fact witnesses, respectively, are **DENIED AND DISMISSED WITH PREJUDICE** because these claims are procedurally defaulted.

IT IS FURTHER ORDERED that petitioner's second claim for relief, that the evidence was insufficient to conclude that the petitioner had the specific intent to commit the alleged offense, shall remain pending for further review.

THUS DONE AND SIGNED, in chambers, in Lafayette, Louisiana, on this 12th

day of May, 2010.


RICHARD T. HAIK
UNITED STATES DISTRICT JUDGE